45,004—14-11-29.

Law (genl) (1930) Department.

hd SERIES.

G.O. No. 3576

DATED 22—8—1930

[Despatch Abstract.]

Legal Assistance

Fees to Pleader - examina. Prosecution & Process-server - Naga Hills - Deputy Commr's Court - Goomtpur - payment sanctioned deducting compensation awarded.

C.F. 30.

Law (General) **DEPARTMENT.**

Q 2930 B-P

Received ..... 19 *Registered* 19

Subject.

Legal assistance - to public servant - payment of fees - Rs.35 - sanction requested.

ENCLOSURES.
No. .....
.....
Spare copies .....

Ref.Cl-No 4354-1930.

Station Mangalore, *Dated the* 10th July 1930.

From (Name) G. W. Wells, Esquire, M.A., I.C.S.,
(Designation) Dt. Magistrate of South Kanara.

To The Secretary to the Government of Madras,
Law (General) Department,
Madras.

Sir,

I request that Government may be pleased to sanction the payment of Rs.35 (rupees thirty five) to M.R.Ry. K.Narasimh Kamath Avl., Vakil, Coondapoor who was engaged to defend Naga, a process-server of the Dt.Munsif's court, Coondapoor in C.C. 33 of 1930 on the file of the Stationary Sub-Magistrate, Coondapoor.

2. At the instance of the Dt. Judge of South Kanara, I had authorised the process-server to engage Mr. Kamath for his defence, at a rate of fees not exceeding Rs.15 per day of trial, and Rs.75 for the whole case. The case was disposed of on 17-4-1930, the process-server and the other accused being

all discharged and awarded by the Sub-Magistrate a compensation of Rs.10 each. I enclose a copy of the Sub-Magistrate's order in the case finding the complaint filed against the process-server and others to be false and vexatious.

3. The case was posted for trial to 24-3-30, 8-4-30 and 17-4-30 by the Court, and the Vakil appeared on all these dates. He is entitled to Rs.45, of which the process-server will pay him the amount of Rs.10, he has been awarded as compensation. The balance of rupees thirty five may be paid by Government. I enclose the Vakil's receipt for the amount.

Your obedient servant,

For Dt. Magistrate.

11.7.30

No. 69 Magl.—5-12.

4 5 10. 12

FORM II.—CALENDAR AND JUDGMENT

(For use in cases where there are more accused persons)

District of South Kanara.—.

Calendar of cases tried by the Sixth Class Magistrate of Kundapur —. Taluk.

Offence.*	Date of: Report or complaint.	Apprehension of accused.	Commencing trial.	Sentence or order.	Explanation of delay and Remarks.
30-1-30 Shirur village.	5-2-30	5-2-30	8-4-30.	17-4-30.	

* The place of offence should also be noted in this column.

Judgment in Calendar Case No. 33 of 1930, on the file of the Sixth Class Magistrate of Kundapur

Complainant Ramaki —.

	Name of accused.	Age.	Father's name.
1	B. Naga —.		
2	Malla Gunnera Salu —		
3	" Moidin Sahib		not Examined. —.
4	W. J. D. Souza. —		
5	Gonsalves. —		
6	Prabhu —.		

	Caste or religion.	Calling.	Residence.	Taluk.
1				
2				
3	——	not Examined	——	
4				
5				

Offence voluntarily causing hurt wrong ful restraint & house trespass. Sec. 323. 341 & 448 I.P.C.

Finding Offence not proved. —.

Sentence ordered to Pay Complainant Rs. 10/- to each of the accused and in default to S.I. of three weeks.

Accused discharged under sec 250(2) Cr.P.C. & complainant

(Sd) B. K. Krishna Rao
Sixth Class Magistrate.

Note.—Instructions to fill up this form are given in this office Standing Order, dated 29th May 1894, No. 869 M.

5

Date of Receipt.

REMARKS OF THE DISTRICT MAGISTRATE,

ate of Despatch
,, Receipt

REPLY OF THE SUB-MAGISTRATE.

te of Despatch
Receipt
191

FROM

THE CLASS MAGISTRATE OF

To

THE DISTRICT MAGISTRATE,

THRO'

THE SUB-DIVISIONAL MAGISTRATE OF

Calendar No. of 191

Date of Judgment
,, Despatch
,, Calendar
,, Receipt
191

REMARKS OF THE SUB-DIVISIONAL MAGISTRATE.

Date of Despatch
Receipt
191

REPLY OF THE SUB-MAGISTRATE.

Date of Despatch
Receipt
191

Date of despatch by the Sub-Divisional Magistrate
191

Order

6

This is a complaint filed by one Ramiabi against the accused charging them with having committed offences under secs 323. 341 and 448 I.P.C. Accused is an Amin of the District munsiff's Court Mundgod and accused 4 to 6 Police Sub Inspector Bandar Accused 5 & 6 are a Head Constable and a Constable respectively.

2. Complainant P.W1 was living in a garden known as Goriba Nilithu at Hadavanakone from the time of her ancestors. About 2 years ago one Siddi Mahammad Bapu Saiba of Bhatkal purchased this garden when she obtained it on Chalgeni from him and continued to live in it. A dispute having arisen between accused 2 and Siddi Muhammad Bapu Saiba about this garden accused 2 pressed P.W1 to attorn to him, but she refused to do so. On 30/1/30 at about 3 P.M all the accused came and stood in front of the house of P.W1 accused 1 told that he was going to deliver possession of the house to accused 2 and that all the inmates of the house should clear out of it, failing which the Police would drag them out. P.W1 pleaded that she was occupying that house under Siddi Muhammad Bapu Saiba that she had no decree against her and that She should not therefore vacate the house. On hearing this accused 1 & 4 trespassed into the house, dragged P.W1 out holding her hands and made her sit on the verandah

17

outside. Then she was dragged accused 2 gave her two feet blows. The accused 2 & 3 having then entered the house again to remove moveables which they found there when accused 4 dealt the blows on her head with a stick. On receiving these blows P.W.1 became unconscious, but P.W.4 sprinkled some water on her face whereby she regained consciousness. The accused 5 & 6 then tied her hands with a kumprose. After having carried out some of her moveables accused 2 & 3 locked the house and all the accused went away carrying her hands.

3 out of the six witnesses cited in the Complaint have been examined besides the Complainant herself. P.W.2 & 4 alone have attempted to corroborate her. The evidence of the remaining two witnesses viz P.W.3 & 5 shows that no offence whatever was committed by the accused on the date in question

4. The accused deny the offence & allege that on 30.11.80 accused 1 delivered possession of the house in question to accused 2 in accordance with an order of the District Council but that P.W.1 was not in occupation of the house or garden and that P.W.1 filed this false complaint against them at the instigation of Sheikh Muhammad Bapu Saheb as a counter blast to the one filed by accused 2 against him and the case of P.W.1 for the offence

-tle Court this very garden now pending. 8

5. The question for consideration is whether P.W1 was in occupation of the house when the accused went there on 30.1.30 for delivering it possession to accused 2, and if so whether 2K was ousted from it in the manner alleged by the Complainant. As already stated the case for the Prosecution rests only on the evidence of P.Ws 2 & 4. P.W 4 is the mother in law of P.W1's son and a tenant of Sheikh Muhammu Bapu Lalka. The daughter of P.W 2 is one who has been married to P.W1's Cousin. It is admitted by P.W 2 that there are two factions in the Jamath attached to the mosque of which he is the mullah and that P.W1's sons are men of his faction. It is therefore clear that these two witnesses are persons interested in P.W1. A careful perusal of the evidence of P.Ws 1, 2 & 4 shows that it is unreliable on account of the numerous discrepancies also on material points. According to P.W1 it was accused 1 to 4 that dragged her out of the house, while P.W 2 says that accused 1 & 4 did not join in dragging her out of the house; P.W 4 on the other hand says that accused 2 to 5 dragged P.W1. The Complaint of P.W1 shows that P.W 4 was in the house with P.W1 when the accused came there, whereas P.W 4 says that he went there on hearing some noise from there and saw

accused 2&3 dragging P.W.1. P.W.4 gives out that accused had dragged her daughter about of the house on the date of the alleged offence. This is denied by P.Ws 1&2. There are only a few of the discrepancies noticed in the evidence of these witnesses. On the whole I have no hesitation in characterising the evidence of P.Ws. 1. 2. & 4 as false.

It appears from Ex. II & I that the mulgeni right possessed by Ismail & others in the garden in question was foreclosed by accused 2 & the court auction and that accused 1 went to the locality with the police, and P.Ws 3&5 and delivered possession of the garden & house to accused 2 on 30.1.30 in accordance with an order of the District munsif Kundapur Accused 2 executed on the spot a receipt vide Certified copy Ex I for having received possession of the garden and the tenement & receipt was attested by P.Ws 3&5 and according to it the delivery was effected peacefully. P.Ws 3&5 are admitted by P.W.1 to have been present on the locality on the date in question. According to them P.W. was not in occupation of the house & garden & the aforesaid delivery by P.W.1 did not take place. P.W.5 is certain that as soon as accused 1 told 3 women P.W. was not one of them who were in the house when they went there to go out of the house

they left the house without any protest. These two witnesses are absolutely disinterested persons, and I have no reason to distrust their evidence. It shows that the complaint of P.W.1 is utterly false. On a careful consideration of the circumstances of the case I am inclined to think that P.W.1 filed this complaint at the instigation of Shiddi Muhammad Saiba.

7. Shiddi Muhammad Saiba was cited as a witness in the complaint. P.W.1 says that he is not an eyewitness to the offence and that he has been cited to prove his enjoyment of the garden on Chalgani under him. This witness failed to appear before the court on the pretext of illness although process was served on him. From the evidence of the eyewitnesses it has been proved that the offences complained of did not take place and that P.W.1 was not in occupation of the house at the time of its delivery. I consider it unnecessary to adjourn the case for recording his evidence about the question of P.W.1's title. For this Shiddi Muhammad Saiba has been shown to be interested in the prosecution.

8. In the result I find that the charge against the accused is groundless and that no case against the accused has been made out which if unrebutted would warrant their conviction and accordingly discharge them under sec 253 (2) Cr. P.C.

11

9. The accused have been unnecessarily dragged to Court on Several occasions. Some of them had to come from Kodikal, Shiroor and other places leaving aside their work. The complaint is therefore vexatious besides being false. Further when called upon to show cause why compensation should not be awarded the accused said, ~~that the accused says~~ that the accused really beat her. For the reasons already given I hold that the complaint is false and vexatious and accordingly direct under sec 250 Cr. P.C. that the complainant do pay — compensation at the rate of Rs 10/- ten only to each of the accused, in default to suffer simple imprisonment for three weeks.

(Sd) Krishna Rao.
7.4.30. Stg Sub Magistrate

Appendix

Witnesses examined for the —

Prosecution

1. Shivaiah —
2. Kamala dismissed Servant
3. Kagga alias Narayana Shetty —
4. Ramiah —
5. Lakshmi Devaki maiden Servant —

Defence —

— nil —

Exhibits filed for the — Defence —

Prosecution —

I. Certified Copy of the delivery receipt dated 30.1.30. in R.C.P. 60/29 of the Sub Magistrate

— nil —

I a. Sale Certificate dated
[illegible] issued at R.E. [illegible]
[illegible] [illegible] [illegible]

material objects [illegible]

(Sd) Bhimrao Ram
Jt. 30.-.1929 Sub magistrate

True Copy

Bo
Ramanand
Kasaelik
1929 Sub magistrate

15/
5.30
29

19

Law (General) Dept

21/7

5/21.7 Letter 2930 B1
Ref. 21.7.30

To the Hon'ble the Chief Justice,
High Court of Judicature
Madras. (with enclosure
C.F.

Hon'ble Sir

Legal assistance - Fees to Pleaders - Criminal Proc. Code - Execution of Process serves - Naga - of Municiffs' Courts - Coondapur.

—

I am directed to forward herewith in original the accompanying letter from the District Magistrate of South Kanara Ref No C1 - 4354 - 1930 dt 10.7.30 on the above subject and to request that the Hon'ble the Judges will be so good as to offer their remarks on the recommendation of the District

KD. 14.7.30

17/7

ASSTANT SECY TO GOVT
19 JUL 1930
LAW DEPT.

DEPARTMENT. C.F.30.

Received 5 AUG 30 192 Registered 192

Subject.

L. 32943
578/30

ENCLOSURES.
No
Spare copies

R.O.C. No. 3048/B2/30

Station Madras, Dated the 4th August 1930

From (Name) C. S. White Esquire (Solicitor),
(Designation) Registrar, High Court

To The Secretary to the Government of Madras,
Law(General) Department.
(with originals returned)

Sir,

Legal assistance-Fees to pleader-Criminal Prosecution of Process server-Kaya-District Munsif's court, Tundapur.
Reference: Your letter No.2950 B-1 dated the 21st July 1930.

I am to state that the Hon'ble the Judges consider that, in the circumstances stated, the recommendation of the District Magistrate may be accepted and that the amount of Rs.35/ due to the pleader, who conducted the defence of the process server in the Criminal proceedings instituted against him may be paid by Government.

I have the honour to be,
Sir,
Your most obedient servant

for Registrar.

4.8.30

2919 15

Law (Genl) Dept

T. M.

6/8
7.8

C No 3294B

From the Asst Secty to Govt. Law (Gl) Dept
To the Registrar. High Court. Madras.

Reference. your Roc No
3048/32/30 dy 4.8.30.
Legal Assistance to Prisoners
Kerner Nagar - District
Munsif's Court. Coondapur

Please return the letter
from the District Magte, South
Kanara Ref No C.1- 43574-930
dy 10.7.30 forwarded with this
dept letter No 2930B-1, dy 21.7.30.

5.8.30

6/8

Issued
PS
6/8

Stott. II-5 (a)—50,006—5-11-29.

Law (General) DEPARTMENT.

	Date	Initials.
When received for Fair-copying.	3/2/30	
When copied ..	3/8/30	
When examined ..		
When signed ..	4/8/30	
When despatched ..		

Legal Assistance.

Fees to Pleader - Criminal Prosecution

of Process server - Naga - Dt Munsif's Court - Coondapoor - payment

sanctioned dedressing ~~of~~ Compensation

amount - to

READ AGAIN G.O. No. [illegible], dated 19

" " " " [illegible] , ... 19

READ ALSO:

C. No. 29303 From the Dpi. Sorlti Kanara Rg. No. C1-4357/30 dated 10.7. 1930.

" " Letter to the Hon'ble Fcg. No 29303-1 Dy " 21.7. 1930.

" " 32943. From the Regr. High Court. Madras. Roc. No 3048/32/30 Dy 4.8.30

ORDER.

MS.

No. 3576, dated 22/8/ 1930

The Govt sanction the payment of Rs 35 (Rupees Thirty five only) to the pleader engaged to depend B. Naga, process-server, Dt Munsif's Court, Coondapoor in C.C. No 33 of 1930 on the file of the Dy Stamp Coondapoor. The amount of Rs 10 (Rupees Ten only) awarded as Compensation to the accused process-server should also be paid to the pleader towards his fees.

The Expenditure of Rs 35 (Rupees Thirty five only) will be debited to "24-6- Admn. of Justice - Law

R

Officers - Supplies and services - Orders.

Mainly fees to Pleaders not in Govt service" in the C.S.E for 1930-31.

KP. 13.8.30.

13/8

13/8

J

E.J. 15/8

Note.

For a precedent please see G.O. No. 3190 Law(Genral) dated 15.8.29. (2)

The draft order maybe sent to Finance for acceptance.

KP. 13.8.30.

13/8

E.J. 15/8

13/8

Finance E.R

The draft order may be accepted

19/8/30

Law (Genl) Dept

Law (Genl) Dept

May issue

KP 21.8.30.

21/8

21/8

Note Dr. Antti Ramana (with a stamp receipt attd 3 cf.)

Sig. through Fin

Fin Dept ✓

Stn'ed sig. (with cf)

15/8/30

Law (Gl): 3294B-1 16.8.30

Fin.

THE SECRETARY TO GOVT. 16 AUG 1930 FINANCE DEPT.

2559.

ASSISTANT SECRETARY TO GOVT. 20 AUG 1930 LAW DEPT.

Finl. 2559/B-1 20.8.30

L. G. 3468. B 20.8.30